

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ePLUS, INC.,)	
)	
Plaintiff,)	Civil Action No. 3:09-CV-620 (REP)
)	
v.)	
)	
LAWSON SOFTWARE, INC.,)	
)	
)	
Defendant.)	

**PLAINTIFF ePLUS INC’S OBJECTIONS TO DEFENDANT’S DEPOSITION
DESIGNATIONS AND SUMMARY OF THE DEPOSITION OF GERARD WISSING
AND COUNTER-DESIGNATIONS**

Plaintiff, ePlus, Inc. (“ePlus”), through counsel, hereby submits the following general and specific objections to Defendant Lawson Software, Inc.’s Deposition Designations and summary of the deposition of Gerard Wissing and offers the following counter-designations:

General Objections

1. Best Evidence: Defendant repeatedly questioned Mr. Wissing about the contents of documents which he never saw prior to his deposition. In responding to Defendant’s questions, Mr. Wissing merely restated what was written in the actual document. Defendant must introduce into evidence the underlying documents – not testimony as to the contents of such documents. *See* Fed. R. Evid. 1002 (“To prove the content of a writing . . . the original writing . . . is required”); *see also* Fed. R. Evid. 1004 (“other evidence of the contents of a writing is admissible” only if originals are lost, destroyed, not obtainable or possessed by opponent or are “not closely related to a controlling issue”).

2. Scope/ Foundation: Defendant questioned Mr. Wissing about certain SAP products, including whether SAP “sells” those products, the features and functionality of those

products and the product change history for those products without first establishing that Mr. Wissing had any personal knowledge about those products. As noted by Mr. Wissing's attorney, these questions were also outside the scope of testimony for which Mr. Wissing was designated to testify on behalf of SAP. Mr. Wissing's speculative responses and assumptions are not admissible evidence.

3. Undue prejudice as to testimony concerning specific products: Defendant attempted to solicit testimony as to whether SAP currently sells certain products. This testimony is irrelevant and unduly prejudicial since Defendant did not solicit testimony as to whether products currently sold by SAP are licensed under the patents-in-suit or even whether the products currently sold possess the same features and functionality as the products accused of infringement of *ePlus* in the *SAP* litigation.

Specific Objections

Defendant's Designations	<i>ePlus</i>'s Objections	<i>ePlus</i>'s Objections to Defendant's Deposition Summary
6:8-7:7		
7:8-17		
7:18-8:17		
8:18-9:3		
9:4-8		
11:3-4 and 12-13	Vague and ambiguous (as to what SAP AG "does"); 401 (conduct of SAP AG is not relevant)	
17:3-7 and 15	Vague and ambiguous (as to "ERP software applications" and "the biggest sellers of ERP software applications"); 602; 401/ 403	
25:21-26:3	Vague and ambiguous (as to what the <i>ePlus</i> / SAP litigation was "about"); scope	
26:20-23		
27:15-28:4	901 (the witness testified that he had never seen, and was not familiar with, the document (28:5-8)); 602;	

Defendant's Designations	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
	1002/1004	
29:13-23	Vague and Ambiguous (as to how the ePlus/ SAP litigation was "resolved"); 901; 602; 1002/1004	
31:2-8	602; 901; 1002/1004	
31:17-20	602; 901; 1002/1004	
32:17-21	602; 901; 1002/1004	
35:7-36:1	Vague and ambiguous (as to whether SAP continues to "sell" certain products); 401/ 403; 602	
36:11		
37:18-38:1, 4-8 and 13	Scope; 602; 1002/1004	
38:14		
39:10-42:19	401/403; 602; 1002/1004	
43:16-24	Vague and ambiguous (as to "SAP's ERP product"); 401/403; 602	
44:4-7	401/403; 602	
44:8		
45:5-16	401/403; 602	
47:10-19	Vague and ambiguous (as to "SAP's CRM software product"); Incomplete testimony; 401/403; 602	
48:4-7	602	
48:8-20	Vague and ambiguous (as to "Business Suite products," "SRM products," "ERP products" and "CRM products"); 401/403; 602	
49:12-51:11	Vague and ambiguous (as to "changes to" SAP's products "because of any products owned by ePlus"); 401/403; 602	
52:5-16		
53:21-23	901	
54:3-10	Vague and ambiguous (as to "software support services offered by SAP"); Scope; 401/403; 602; 901; 1002/1004	
54:25-55:15	Vague and ambiguous (as to "services for implementing its software applications"); Scope; 401/403; 602	
56:15-16		
57:2-4, 10-11 and 14-15	Vague and ambiguous (as to "catalog	

Defendant's Designations	ePlus's Objections	ePlus's Objections to Defendant's Deposition Summary
	content management product"); Scope; 401/403; 602; 1002/1004	
58:1-4	401/403; 602	
63:2-9	401/403	
63:17-64:4	401/403	
70:23-71:11	Vague and ambiguous (as to SAP's products); 401/403; 602	
83:6-84:4	401/403; 602	

ePlus's Counter-Designations
26:24-27:1
28:5-8
29:10-12
31:9-16
47:20-21
47:24-48:3
48:21-23
49:4
57:16-18
57:22-25
70:4-5
70:10-12
70:17-20
70:22
73:1-6
73:13-14
73:19-25
74:9-75:13
75:24-77:6
77:15-78:2
79:24-80-1
80:11-14
80:19-81:11
81:16-20

Respectfully submitted,

/s/

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Dated: August 9, 2010

Gerard Wissing (May 11, 2010) – Rebuttal Summary

At the time of his deposition, Mr. Wissing was the Chief Operating Officer for the global Intellectual Property Group at SAP, AG. (6:19-21). Mr. Wissing does not recall what patents *ePlus* asserted against SAP or what SAP products *ePlus* asserted infringed the patents-in-suit. (26:24 – 27:1; 29:10-12; 70:4-5; 70:10-12; 70:17-20; 70:22). Although Mr. Wissing was asked questions about the licensing agreement between SAP and *ePlus*, he testified that he had never seen the document before Lawson’s counsel provided it to him at the deposition. (28:5-8). Mr. Wissing testified that, according to the license agreement given to him by Lawson, SAP paid to *ePlus* \$17.5 million. (80:23 – 81:11; 81:16-20).

Mr. Wissing has never analyzed whether any SAP product is covered by the *ePlus* patents. (73:20-25; 74:9 – 75:3). According to Mr. Wissing, SAP has never admitted that its products are covered by the *ePlus* patents. (80:11-14; 80:19-22). He did not know whether the license agreement contained a license to the patents-in-suit. (31:9-16). Mr. Wissing does not know whether *ePlus* ever asked SAP to mark any products with *ePlus* patent numbers. (48:21-23; 49:4).

Mr. Wissing was asked about several documents located on the SAP website and he testified that he had never seen any of them before the deposition. (47:20-21; 47:24 – 48:3). Based on his review of the exhibits given to him by Lawson, Mr. Wissing testified that none of the documents given to him contain any patent numbers. (75:4-13; 75:24 – 77:6). He also testified that he was not familiar with SAP’s catalog content management product. (57:16-18; 57:22-25).

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF VIRGINIA</p> <p>3 RICHMOND DIVISION</p> <p>4 -----x</p> <p>5 EPLUS, INC., :</p> <p>6</p> <p>7 Plaintiff, :</p> <p>8 -against- Civil Action No. :3:09-CV-620</p> <p>9 LAWSON SOFTWARE, INC., :</p> <p>10 Defendant. :</p> <p>11 -----x</p> <p>12</p> <p>13 VIDEOTAPED DEPOSITION of SAP, A.G., by GERARD</p> <p>14 WISSING, taken by Defendant at the offices of Howrey,</p> <p>15 LLP, 601 Lexington Avenue, New York, New York 10022,</p> <p>16 on Tuesday, May 11, 2010, commencing at 12:02 o'clock</p> <p>17 p.m., before Annette Forbes, a Certified Shorthand</p> <p>18 (Stenotype) Reporter and Notary Public within and for</p> <p>19 the State of New York.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A P P E A R A N C E S (Continued):</p> <p>2 KEVIN HAMEL, ESQ</p> <p>3 Attorneys for SAP, America</p> <p>3999 West Chester Pike</p> <p>Newtown Square, Pennsylvania 19073</p> <p>4 (Appearing via teleconference)</p> <p>5</p> <p>6 ALSO PRESENT:</p> <p>7 Michael Bennett</p> <p>Videographer</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 GOODWIN PROCTOR, LLP</p> <p>Attorneys for Plaintiff</p> <p>901 New York Avenue</p> <p>Washington, D.C. 20001</p> <p>5 BY: SCOTT ROBERTSON, ESQ.</p> <p>(Appearing via teleconference)</p> <p>6</p> <p>7</p> <p>8 MERCHANT & GOLD, P.C.</p> <p>Attorneys for Defendant</p> <p>1050 17th Street, Suite 1950</p> <p>Denver, Colorado 80265</p> <p>10</p> <p>11 BY: KIRSTIN STOLL-DEBELL, ESQ.</p> <p>(Appearing via teleconference)</p> <p>12</p> <p>13</p> <p>14 HOWREY, LLP</p> <p>Attorneys for SAP, America</p> <p>and the Witness</p> <p>1950 University Avenue</p> <p>East Palo Alto, California 94303</p> <p>17 BY: WILL NELSON, ESQ.</p> <p>(Appearing via teleconference)</p> <p>19 -and-</p> <p>20 HOWREY, LLP</p> <p>601 Lexington Avenue</p> <p>New York, New York 10022</p> <p>22 BY: R. COREY WORCESTER, Esq., of Counsel</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THE VIDEOGRAPHER: We are now</p> <p>2 on the record beginning approximately</p> <p>3 12:02 p.m., May 11, 2010.</p> <p>4 This is the deposition of SAP,</p> <p>5 S.A. by Gerard Wissing, taken in the</p> <p>6 matter of ePlus, Inc, plaintiff,</p> <p>7 versus Lawson Software, Inc.,</p> <p>8 defendant, in the United States</p> <p>9 District Court for the Eastern</p> <p>10 District of Virginia, Richmond</p> <p>11 Division, Civil Action No. 309-CV-620.</p> <p>12 The location at which this</p> <p>13 deposition is being taken is the</p> <p>14 offices of Howrey, LLP, located at 601</p> <p>15 Lexington Avenue in New York, New</p> <p>16 York.</p> <p>17 Present along with Mr. Wissing</p> <p>18 is the stenographic reporter, Annette</p> <p>19 Forbes, and currently speaking, the</p> <p>20 videographer, Michael Bennett,</p> <p>21 representing Pro Systems Court</p> <p>22 Reporting and Video Services, 4305</p> <p>23 Bryant Avenue South, Minneapolis,</p> <p>24 Minnesota.</p> <p>25</p>

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<p>5</p> <p>1 Would counsel please identify</p> <p>2 themselves.</p> <p>3 MR. WORCESTER: Corey</p> <p>4 Worcester on behalf of Mr. Wissing and</p> <p>5 SAP.</p> <p>6 MR. NELSON: Will Nelson on</p> <p>7 behalf of SAP and Mr. Wissing, from</p> <p>8 the Howrey firm, as well.</p> <p>9 MS. STOLL-DEBELL: Kirstin</p> <p>10 Stoll-Debell with the firm of Merchant</p> <p>11 & Gould, on behalf of Lawson Software,</p> <p>12 Inc.</p> <p>13 MR. ROBERTSON: This is Scott</p> <p>14 Robertson, Goodwin, Proctor, on behalf</p> <p>15 of plaintiffs, ePlus, Inc.</p> <p>16 MR. HAMEL: Kevin Hamel on</p> <p>17 behalf of SAP.</p> <p>18 THE VIDEOGRAPHER: Thank you</p> <p>19 very much.</p> <p>20 Will the reporter please swear</p> <p>21 in the witness.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 A Since 2005.</p> <p>2 Q So what position did you have before</p> <p>3 your current position?</p> <p>4 A When I first started, trying to</p> <p>5 think back, I believe it was senior counsel, and</p> <p>6 then I became what they called chief of staff and</p> <p>7 then chief operating officer.</p> <p>8 Q Where did you work before SAP, A.G.?</p> <p>9 A I was with Computer Associates</p> <p>10 International, Inc.</p> <p>11 Q How long did you work there?</p> <p>12 A Five years.</p> <p>13 Q Generally, what did you do for</p> <p>14 Computer Associates?</p> <p>15 A I was the vice president and</p> <p>16 assistant general counsel for intellectual</p> <p>17 property.</p> <p>18 Q Where did you work before Computer</p> <p>19 Associates?</p> <p>20 A I was a senior associate at Thelen,</p> <p>21 Reid & Priest.</p> <p>22 Q Would you spell that for me, please?</p> <p>23 A Thelen, T-H-E-L-E-N, Reid, R-E-I-D,</p> <p>24 I believe, & Priest, P-R-I-E-S-T.</p> <p>25 Q How long were you there,</p>
<p>6</p> <p>1 GERARD WISSING, called as a</p> <p>2 witness, having been first duly sworn by</p> <p>3 Annette Forbes, a Notary Public within and</p> <p>4 for the State of New York, was examined and</p> <p>5 testified as follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MS. STOLL-DEBELL:</p> <p>8 Q Good morning, Mr. Wissing.</p> <p>9 A Good morning.</p> <p>10 Q Would you spell your name for the</p> <p>11 record, please?</p> <p>12 A Sure. The name is Gerard,</p> <p>13 G-E-R-A-R-D, Wissing, W-I-S-S-I-N-G.</p> <p>14 Q What is your business address?</p> <p>15 A It's at 3999 West Chester Pike,</p> <p>16 Newtown Square, Pennsylvania.</p> <p>17 Q Do you work for SAP America, Inc.?</p> <p>18 A No. I work for SAP, A.G.</p> <p>19 Q What do you do you for SAP, A.G.?</p> <p>20 A I am the chief operating officer for</p> <p>21 the global IP Group for SAP, AG.</p> <p>22 Q How long have you had that position?</p> <p>23 A For about two years.</p> <p>24 Q How long have you worked for SAP,</p> <p>25 A.G.?</p>	<p>8</p> <p>1 approximately?</p> <p>2 A Approximately two years.</p> <p>3 Q Did you work any other place before</p> <p>4 that?</p> <p>5 A Prior to that?</p> <p>6 Q Yes.</p> <p>7 A Prior to that, I was a senior</p> <p>8 associate at Cooper & Dunham, LLP.</p> <p>9 And prior to that I was an associate</p> <p>10 with Dilworth, D-I-L-W-OR-T-H, & Barresse,</p> <p>11 B-A-R-R-E-S-S-E, LLP.</p> <p>12 Prior to that I was a law clerk with</p> <p>13 Morgan & Finnegan.</p> <p>14 And prior to that I was an engineer</p> <p>15 for Eaton Corporation, E-A-T-O-N, AIL Division.</p> <p>16 Q What kind of engineer?</p> <p>17 A Electrical engineer.</p> <p>18 Q Where did you go to law school?</p> <p>19 A St. John's University School of Law.</p> <p>20 Q When did you graduate?</p> <p>21 A 1991.</p> <p>22 Q Where did you go to college?</p> <p>23 A New York Institute of Technology.</p> <p>24 Q What degree did you get?</p> <p>25 A Bachelor of science in electrical</p>

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<p>9</p> <p>1 engineering.</p> <p>2 Q When did you get that?</p> <p>3 A 1985.</p> <p>4 Q Are you a patent attorney?</p> <p>5 A I'm a registered patent attorney.</p> <p>6 yes.</p> <p>7 Q When did you get your registration?</p> <p>8 A 1991.</p> <p>9 Q Of all of the different positions</p> <p>10 that you just described, did you generally</p> <p>11 practice patent law in all of those?</p> <p>12 MR. NELSON: Objection.</p> <p>13 Vague.</p> <p>14 Q Let me ask a better question.</p> <p>15 Of any of the positions that you</p> <p>16 described, were there any that you did not</p> <p>17 practice patent law?</p> <p>18 A Yes.</p> <p>19 Q Which one?</p> <p>20 A Eaton Corporation, AIL Division.</p> <p>21 Q Anything else?</p> <p>22 A No.</p> <p>23 Q Have you ever been deposed before?</p> <p>24 A Yes.</p> <p>25 Q How many times?</p>	<p>11</p> <p>1 parent?</p> <p>2 A Correct.</p> <p>3 Q Can you tell me a little bit about</p> <p>4 SAP, A.G., what kind of, what does it do?</p> <p>5 MR. NELSON: Objection.</p> <p>6 Vague. It's also outside the</p> <p>7 scope of the testimony for which we</p> <p>8 agreed to provide a witness.</p> <p>9 Mr. Wissing, if you have any</p> <p>10 personal information to offer, go</p> <p>11 ahead.</p> <p>12 A SAP is an independent business</p> <p>13 software vendor.</p> <p>14 Q So SAP sells software?</p> <p>15 A Yes. Well, I believe we license</p> <p>16 software.</p> <p>17 Q What kind of software?</p> <p>18 MR. NELSON: I have the same</p> <p>19 objection.</p> <p>20 Go ahead, Mr. Wissing.</p> <p>21 A Based on what I know, business</p> <p>22 application software.</p> <p>23 Q Have you heard the term enterprise</p> <p>24 resource planning software?</p> <p>25 A Yes.</p>
<p>10</p> <p>1 A On two occasions.</p> <p>2 Q When was the first one?</p> <p>3 A I have to think that one through.</p> <p>4 It was in the 1990s. I don't</p> <p>5 remember the exact year.</p> <p>6 Q What about the second?</p> <p>7 A Early two thousand -- probably the</p> <p>8 2002, 2003 time frame.</p> <p>9 Q So for neither one of those were you</p> <p>10 working for SAP; is that right?</p> <p>11 A Correct.</p> <p>12 Q What is the difference between SAP,</p> <p>13 A.G. and SAP America, Inc.?</p> <p>14 MR. NELSON: I object.</p> <p>15 Outside the scope of the topics.</p> <p>16 Mr. Wissing, if you know the</p> <p>17 answer, go ahead.</p> <p>18 A I don't know the technical</p> <p>19 difference. One is a U.S. subsidiary, I believe,</p> <p>20 of the parent company.</p> <p>21 Q Which one is the subsidiary?</p> <p>22 A SAP Americas, Inc.</p> <p>23 But, as I said, I don't know the</p> <p>24 technical structure legally.</p> <p>25 Q So you think SAP, A.G. is the</p>	<p>12</p> <p>1 Q What is your understanding of that</p> <p>2 term?</p> <p>3 MR. NELSON: I object.</p> <p>4 It's outside the scope for</p> <p>5 which SAP has agreed to provide a</p> <p>6 witness.</p> <p>7 Mr. Wissing, I suppose you if</p> <p>8 you have an understanding, go ahead</p> <p>9 and answer.</p> <p>10 If you don't, say you don't</p> <p>11 know.</p> <p>12 A I don't know.</p> <p>13 Q I would like to have you look at</p> <p>14 Exhibit 53.</p> <p>15 MR. NELSON: Kirstin, give us</p> <p>16 all a minute to get there, if you</p> <p>17 would, please.</p> <p>18 MS. STOLL-DEBELL: Sure. No</p> <p>19 problem.</p> <p>20 This is going to have Bates</p> <p>21 Nos. SAP America 00030 to 00060, I</p> <p>22 believe.</p> <p>23 MR. WORCESTER: Kirstin, I'm</p> <p>24 going to look at it before the witness</p> <p>25 does.</p>

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<p>1 Could you read off the Bates 2 numbers for me again? 3 MS. STOLL-DEBELL: Sure. It's 4 Exhibit 53, SAP America, 00030 to, 5 actually, I think it's 00065. 6 MR. WORCESTER: Okay. 7 MS. STOLL-DEBELL: Let me know 8 when you are ready. 9 MR. NELSON: While the witness 10 is looking at it, I just want to 11 clarify the record. 12 This has Bates stamps that are 13 different than what we have stamped. 14 I take it this is something 15 that I had sent to your associate 16 earlier and that you guys stamped 17 yourselves? 18 MS. STOLL-DEBELL: That's 19 right, but I think it's the same 20 thing. 21 MR. NELSON: I think it is, 22 too. I just want to make clear on the 23 record that the Bates is yours. 24 MS. STOLL-DEBELL: Right. 25 MR. WORCESTER: I have just</p>	<p>15 1 BY MS. STOLL-DEBELL: 2 Q Yes. 3 Have you seen this document before, 4 Exhibit 53? 5 A Yes. 6 Q What is it? 7 A It says it's from AMR Research. It 8 has on it, it says ERP 2007 Market Sizing Series. 9 It says the ERP Market Sizing 10 Report, 2006-2011. 11 Q Let's look at -- well, can you tell 12 me what your understanding of the contents of this 13 document are? 14 A I don't have any understanding. 15 Q To back up a little bit, what are 16 your job duties in your current position as chief 17 operating officer for Global IT? 18 MR. NELSON: Mr. Wissing, just 19 a general cautionary instruction. 20 You can answer this question 21 as to your general responsibilities, 22 but I would ask you to keep out of 23 your answer any specific information 24 about the work that you do for SAP 25 because most of it would be</p>
<p>14 1 handed the exhibit to Mr. Wissing. 2 Mr. Wissing, if you could look 3 at it for a moment and then when you 4 are ready, I will let counsel know. 5 A (Perusing document.) Okay. 6 BY MS. STOLL-DEBELL: 7 Q Mr. Wissing, have you seen this 8 document before? 9 MR. NELSON: Mr. Wissing, I 10 want to give you an instruction here, 11 because you may have seen this 12 document and other documents like this 13 in connection with your preparation. 14 I'm going to instruct you that 15 you can answer that question yes or 16 no, but not to discuss the substance 17 of the discussions you may have had 18 with your attorney about this. 19 Do you understand that 20 instruction? 21 THE WITNESS: Yes. 22 MR. NELSON: Go ahead and 23 answer the question. 24 MR. WORCESTER: Can you repeat 25 the question, Kirstin?</p>	<p>16 1 privileged, I would suspect. 2 A My general responsibilities are to 3 assist and counsel the chief IP officer and the 4 executive board for the company on intellectual 5 property matters. 6 Q Do you see documents like Exhibit 3 7 as part of your job duties? 8 MR. NELSON: Objection. 9 Vague. 10 A No. 11 Q Have you seen Exhibit 3, other than 12 in connection with getting prepared for this 13 deposition? 14 A I'm sorry, Exhibit 3? 15 Q 53. I'm sorry, if I said 3, I'm 16 mistaken. 17 A I'm sorry. Can you repeat the 18 question? 19 Q Yes. 20 Have you seen Exhibit 53 otherwise 21 than as preparing for your deposition? 22 A No. 23 Q Did you read Exhibit 53 while 24 preparing for your deposition? 25 MR. NELSON: You can answer</p>

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<p>17</p> <p>1 that question yes or no.</p> <p>2 A No.</p> <p>3 Q Does SAP license ERP software</p> <p>4 applications?</p> <p>5 A Yes.</p> <p>6 Q How does SAP rank among the biggest</p> <p>7 sellers of ERP software applications?</p> <p>8 MR. NELSON: Objection.</p> <p>9 Vague. I'll also object, it's</p> <p>10 outside the scope for which this</p> <p>11 witness has been designated.</p> <p>12 If you have an answer,</p> <p>13 Mr. Wissing, to your personal</p> <p>14 knowledge, you may answer.</p> <p>15 A I believe we are the market leader.</p> <p>16 Q Let's look at Page 2 of Exhibit 53.</p> <p>17 MR. WORCESTER: When you say</p> <p>18 Page 2, Kirstin, do you mean the table</p> <p>19 of contents, which is the second page</p> <p>20 of the document, or the document</p> <p>21 numbered 2, the page numbered 2?</p> <p>22 MS. STOLL-DEBELL: I mean page</p> <p>23 2 of the document, which also has a</p> <p>24 Bates number of SAP America 00033.</p> <p>25 MR. WORCESTER: Okay.</p>	<p>19</p> <p>1 Kirstin, I'm not trying to be</p> <p>2 obstructionist here. It says what it</p> <p>3 says. He told you his view.</p> <p>4 I don't know what you want him</p> <p>5 to do with this.</p> <p>6 MS. STOLL-DEBELL: I want him</p> <p>7 to answer the question so we can move</p> <p>8 on.</p> <p>9 A Please repeat the question again</p> <p>10 now.</p> <p>11 Q Sure. Does this confirm your</p> <p>12 understanding that SAP is the market leader for</p> <p>13 ERP software applications?</p> <p>14 MR. NELSON: Same objection.</p> <p>15 It's outside the scope. Same</p> <p>16 objection, it's vague.</p> <p>17 I will also object to the lack</p> <p>18 of foundation.</p> <p>19 A I can tell you what the document</p> <p>20 says.</p> <p>21 "Oracle and SAP continue to dominate</p> <p>22 the market among very large global companies."</p> <p>23 Q Let's look at Page 5 of this</p> <p>24 document, which has the Bates number SAP America</p> <p>25 00036.</p>
<p>18</p> <p>1 BY MS. STOLL-DEBELL:</p> <p>2 Q Mr. Wissing, does this confirm your</p> <p>3 understanding that SAP is the market leader for</p> <p>4 ERP software applications?</p> <p>5 MR. NELSON: Can I hear the</p> <p>6 question again? I'm sorry, Kirstin.</p> <p>7 Q That's okay.</p> <p>8 Does this confirm your understanding</p> <p>9 that SAP is the market leader for ERP software</p> <p>10 applications?</p> <p>11 MR. NELSON: I will object.</p> <p>12 It's vague.</p> <p>13 I'll also object it's outside</p> <p>14 the scope of the topics for which the</p> <p>15 witness has been designated.</p> <p>16 A I haven't read the page, so I don't</p> <p>17 know what it says.</p> <p>18 Q Take a minute to look at it, and</p> <p>19 specifically you can look at the second bullet</p> <p>20 point on the top of the page.</p> <p>21 A So I have looked at the second</p> <p>22 bullet.</p> <p>23 Q Can you answer my question?</p> <p>24 MR. NELSON: I'm going to</p> <p>25 object, again, on the same grounds.</p>	<p>20</p> <p>1 A Okay.</p> <p>2 Q My question to you is can you tell</p> <p>3 me generally what SAP's licensing revenues are for</p> <p>4 ERP software applications?</p> <p>5 MR. NELSON: Objection.</p> <p>6 It's outside the scope for</p> <p>7 which this witness has been offered.</p> <p>8 Objection. Calls for</p> <p>9 speculation, lacks foundation, as</p> <p>10 well.</p> <p>11 A I don't know.</p> <p>12 Q Does this page indicate some revenue</p> <p>13 numbers for SAP for a licensing revenue for ERP</p> <p>14 applications?</p> <p>15 MR. NELSON: Same objection.</p> <p>16 Calls for speculation.</p> <p>17 A I don't know.</p> <p>18 Q Look at the top of the page. There</p> <p>19 is a table there.</p> <p>20 Do you see that?</p> <p>21 A I see table one. "ERP vendors</p> <p>22 ranked by application revenue, 2005 to 2006."</p> <p>23 Q I apologize for interrupting you.</p> <p>24 Do you see SAP is listed there?</p> <p>25 A I see SAP is listed, yes.</p>

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<p>21</p> <p>1 Q Do you see revenues for 2005, 2006?</p> <p>2 MR. NELSON: I'll object to</p> <p>3 the lack of foundation.</p> <p>4 Calls for speculation. The</p> <p>5 document speaks for itself.</p> <p>6 Q Mr. Wissing, do you see that?</p> <p>7 A I see that, yes.</p> <p>8 Q Do you have any reason to believe</p> <p>9 that this information is not accurate?</p> <p>10 MR. NELSON: Objection.</p> <p>11 It's outside the scope. Calls</p> <p>12 for speculation.</p> <p>13 A I do not know.</p> <p>14 Q You do not know whether it's</p> <p>15 accurate?</p> <p>16 A I don't know.</p> <p>17 Q Do you have any reason to believe</p> <p>18 it's not accurate?</p> <p>19 MR. NELSON: Same objection.</p> <p>20 A Again, as I said, I don't see these</p> <p>21 documents, so I don't know.</p> <p>22 Q This document was provided to us in</p> <p>23 response to the subpoena that was served on SAP;</p> <p>24 isn't that right?</p> <p>25 A That is my understanding.</p>	<p>23</p> <p>1 A No.</p> <p>2 Q What is IDC?</p> <p>3 A I don't know.</p> <p>4 Q This document was produced to Lawson</p> <p>5 in response to the subpoena we served on SAP; is</p> <p>6 that correct?</p> <p>7 A That is my understanding.</p> <p>8 Q Do you have any reason to believe</p> <p>9 that the contents of this exhibit are not</p> <p>10 accurate?</p> <p>11 MR. NELSON: Objection.</p> <p>12 Calls for speculation.</p> <p>13 A I don't know.</p> <p>14 Q You said that SAP licenses ERP</p> <p>15 software applications.</p> <p>16 That's correct, right?</p> <p>17 A I said it licenses ERP software,</p> <p>18 yes.</p> <p>19 Q Does SAP also license or sell</p> <p>20 hardware as part of an integrated solution with</p> <p>21 its ERP software applications?</p> <p>22 MR. NELSON: I will object.</p> <p>23 It's outside of the scope for</p> <p>24 which SAP has agreed to provide a</p> <p>25 witness.</p>
<p>22</p> <p>1 Q Let's look at Exhibit 52, please,</p> <p>2 which has Bates numbers SAP America 00001 through</p> <p>3 00029?</p> <p>4 MR. NELSON: That's 52?</p> <p>5 MS. STOLL-DEBELL: Yes.</p> <p>6 MR. NELSON: Okay. Thank you.</p> <p>7 MR. WORCESTER: Mr. Wissing,</p> <p>8 take a moment to familiarize yourself</p> <p>9 with the document and then when you</p> <p>10 are ready, let Ms. Kirstin know.</p> <p>11 A (Perusing document.) Okay.</p> <p>12 Q Mr. Wissing, what is Exhibit 52?</p> <p>13 A It says "IDC market analysis.</p> <p>14 Worldwide ERP applications, 2008-2012 forecast and</p> <p>15 2007 vendor shares."</p> <p>16 Q Have you seen this document before?</p> <p>17 MR. NELSON: Mr. Wissing, same</p> <p>18 objection.</p> <p>19 You may answer yes or no, but</p> <p>20 don't reveal the substance of any</p> <p>21 communications you may have had about</p> <p>22 this document.</p> <p>23 A Yes.</p> <p>24 Q Have you seen it other than in</p> <p>25 connection with preparing for this deposition?</p>	<p>24</p> <p>1 In future objections, to save</p> <p>2 everybody time, I'm just going to say</p> <p>3 objection to scope.</p> <p>4 MS. STOLL-DEBELL: That would</p> <p>5 be wonderful.</p> <p>6 MR. NELSON: So you all</p> <p>7 understand that's what I mean.</p> <p>8 I will also object that it</p> <p>9 calls for speculation.</p> <p>10 A I don't know.</p> <p>11 Q Let's look at Exhibit 55, which has</p> <p>12 Bates Nos. L0378497.</p> <p>13 A I'm not there yet.</p> <p>14 Q Through 378500, for the record.</p> <p>15 MR. WORCESTER: Once again,</p> <p>16 Mr. Wissing, please review the</p> <p>17 document, let counsel know when you</p> <p>18 are ready.</p> <p>19 A (Perusing document.) Okay.</p> <p>20 Q Have you seen this before?</p> <p>21 MR. NELSON: Mr. Wissing, same</p> <p>22 objection as before.</p> <p>23 You can answer yes or no, but</p> <p>24 don't reveal the contents of</p> <p>25 communications you may have had about</p>

<p>25</p> <p>1 this document with counsel.</p> <p>2 If there is something outside</p> <p>3 of that, go ahead.</p> <p>4 A Yes.</p> <p>5 Q Is this a brochure that is currently</p> <p>6 available on SAP's public web site?</p> <p>7 A I believe that it is, yes.</p> <p>8 Q What is it?</p> <p>9 MR. NELSON: Objection.</p> <p>10 Vague.</p> <p>11 A It says, "SAP Business All-In-One.</p> <p>12 Fast Start Program. Get from evaluation to</p> <p>13 implementation - fast."</p> <p>14 Q Do you have any knowledge about</p> <p>15 SAP's business all-in-one fast start program other</p> <p>16 than looking at this document in connection with</p> <p>17 getting ready for your deposition?</p> <p>18 MR. NELSON: Objection.</p> <p>19 Scope.</p> <p>20 A No.</p> <p>21 Q I would like to talk to you now</p> <p>22 about the lawsuit between ePlus and SAP.</p> <p>23 What was this lawsuit about?</p> <p>24 MR. NELSON: Objection.</p> <p>25 Scope.</p>	<p>27</p> <p>1 A I do not recall.</p> <p>2 Q If it assists you, let's look at</p> <p>3 Exhibit 45.</p> <p>4 MR. NELSON: Can you give me a</p> <p>5 minute to get there?</p> <p>6 Q Sure. For the record, that's Bates</p> <p>7 No. EPLUS 0940777 through 940801.</p> <p>8 MR. WORCESTER: Mr. Wissing,</p> <p>9 if you could take a moment to</p> <p>10 familiarize yourself with Exhibit 45</p> <p>11 and then let counsel know when you are</p> <p>12 ready.</p> <p>13 A (Perusing document.) Okay.</p> <p>14 Q So I will repeat my question again.</p> <p>15 What patents did ePlus accuse SAP of</p> <p>16 infringing in the lawsuit?</p> <p>17 A Offhand, I do not recall.</p> <p>18 Q If you look at Page 1 of Exhibit 45,</p> <p>19 does that help refresh your recollection?</p> <p>20 A It says in the agreement or in the</p> <p>21 exhibit, U.S. patent Nos. 6,023,683, 6,055,516,</p> <p>22 6,505,172.</p> <p>23 Q To back up a little bit, what is</p> <p>24 Exhibit 45?</p> <p>25 A It states that it is a patent</p>
<p>26</p> <p>1 If you know, Mr. Wissing.</p> <p>2 A It was a patent infringement</p> <p>3 lawsuit.</p> <p>4 Q Were you involved at all in the</p> <p>5 lawsuit while it was happening?</p> <p>6 MR. NELSON: I will offer an</p> <p>7 objection that it's vague.</p> <p>8 I also want to caution you, I</p> <p>9 don't know what your answer is,</p> <p>10 Mr. Wissing, but I want to caution</p> <p>11 you, please don't reveal the substance</p> <p>12 of any work you may have done in the</p> <p>13 litigation until we have a chance to</p> <p>14 talk about it.</p> <p>15 I think that's probably going</p> <p>16 to be privileged.</p> <p>17 A I'm sorry, repeat the question,</p> <p>18 please.</p> <p>19 Q Sure. I'm not looking for</p> <p>20 privileged communications. I'm just wondering if</p> <p>21 you participated in SAP's defense in connection</p> <p>22 with the lawsuit ePlus filed against SAP.</p> <p>23 A Yes.</p> <p>24 Q What patents did ePlus assert</p> <p>25 against SAP in the lawsuit?</p>	<p>28</p> <p>1 license and settlement agreement.</p> <p>2 Q Is it for the lawsuit between ePlus</p> <p>3 and SAP that you mentioned earlier?</p> <p>4 A I believe that is the case.</p> <p>5 Q Have you seen this document before,</p> <p>6 other than in connection with looking at it for</p> <p>7 this deposition?</p> <p>8 A This, no.</p> <p>9 Q Without divulging any privileged</p> <p>10 information, can you tell me generally what</p> <p>11 aspects of SAP's defense you were involved with in</p> <p>12 connection with this lawsuit?</p> <p>13 MR. NELSON: Hold on here.</p> <p>14 I don't know the answer to</p> <p>15 this question, so I'm a little</p> <p>16 concerned about revealing privileged</p> <p>17 information.</p> <p>18 Kirstin, if you really want an</p> <p>19 answer to this question, I'm going to</p> <p>20 need to get on the line with Mr.</p> <p>21 Wissing and find out what he is going</p> <p>22 to say.</p> <p>23 MS. STOLL-DEBELL: Why don't</p> <p>24 we set it aside and we will do it at</p> <p>25 the end so that we can be efficient</p>

<p>29</p> <p>1 here.</p> <p>2 MR. NELSON: Okay.</p> <p>3 MS. STOLL-DEBELL: I think</p> <p>4 generally he ought to be able to</p> <p>5 answer that at a high level without</p> <p>6 divulging privileged communications.</p> <p>7 MR. NELSON: I think that's</p> <p>8 probably right, but I have to --</p> <p>9 MS. STOLL-DEBELL: Okay.</p> <p>10 Q What SAP products did ePlus accuse</p> <p>11 of infringing those patents?</p> <p>12 A I do not recall.</p> <p>13 Q How was the lawsuit resolved between</p> <p>14 SAP and ePlus?</p> <p>15 A My recollection is it was resolved</p> <p>16 by this agreement.</p> <p>17 Q Exhibit 45?</p> <p>18 A Yes.</p> <p>19 Q Does the agreement cover the patents</p> <p>20 that were at issue in the lawsuit?</p> <p>21 A As I said, I don't recall offhand</p> <p>22 the patents that were involved in the lawsuit, but</p> <p>23 the agreement recites three patents.</p> <p>24 Q What SAP products are covered by</p> <p>25 this agreement?</p>	<p>31</p> <p>1 BY MS. STOLL-DEBELL:</p> <p>2 Q What SAP products are listed in this</p> <p>3 agreement?</p> <p>4 And you may want to look at</p> <p>5 Paragraph 1.14, as Mr. Nelson indicated, which is</p> <p>6 on Page 4 of the agreement.</p> <p>7 A Paragraph 1.14 refers to SRM, ERP,</p> <p>8 CRM and mySAP Business Suite products.</p> <p>9 Q Does this agreement include a patent</p> <p>10 license from ePlus to SAP under those three</p> <p>11 patents we mentioned earlier, the '683 patent,</p> <p>12 '516 patent and '172 patent?</p> <p>13 A Offhand, I haven't studied the</p> <p>14 agreement.</p> <p>15 Q So you don't know?</p> <p>16 A I don't know.</p> <p>17 Q Does this agreement include a</p> <p>18 requirement that SAP mark any product with any</p> <p>19 patent owned by ePlus?</p> <p>20 A It does not.</p> <p>21 Q When the parties were negotiating</p> <p>22 this settlement agreement, did ePlus ask for a</p> <p>23 provision that would require SAP to mark any</p> <p>24 products with any patents owned by ePlus?</p> <p>25 MR. NELSON: I am going to</p>
<p>30</p> <p>1 MR. NELSON: I'm going to</p> <p>2 object on the following basis.</p> <p>3 The question, what products</p> <p>4 are covered, in light of the language</p> <p>5 of this licensing agreement,</p> <p>6 particularly Section 1.14, arguably</p> <p>7 asks Mr. Wissing to provide his views</p> <p>8 on whether or not any particular</p> <p>9 product infringes one or more claims</p> <p>10 of the patent.</p> <p>11 Any information like that in</p> <p>12 Mr. Wissing's possession would be</p> <p>13 privileged.</p> <p>14 If you want to ask him whether</p> <p>15 or not the agreement identifies new</p> <p>16 products, particularly 1.14, go ahead,</p> <p>17 but I'm not going to allow him to</p> <p>18 divulge -- I don't think he has done</p> <p>19 that analysis, I'm not going to allow</p> <p>20 him to divulge anything like that.</p> <p>21 MS. STOLL-DEBELL: So you are</p> <p>22 instructing him not to answer that</p> <p>23 question?</p> <p>24 MR. NELSON: That question I</p> <p>25 am instructing him not to answer.</p>	<p>32</p> <p>1 offer my scope objection.</p> <p>2 If you know, you may answer.</p> <p>3 A I don't know.</p> <p>4 Q Does this agreement require that the</p> <p>5 Markman order in the ePlus/SAP litigation be</p> <p>6 vacated?</p> <p>7 MR. NELSON: Objection as to</p> <p>8 scope. Well outside the scope.</p> <p>9 I don't know if you are done</p> <p>10 with your topics that are within the</p> <p>11 scope.</p> <p>12 If you are, we can finish the</p> <p>13 deposition.</p> <p>14 MS. STOLL-DEBELL: I'm not.</p> <p>15 A I haven't studied the agreement. I</p> <p>16 don't know.</p> <p>17 Q When was this settlement agreement</p> <p>18 entered?</p> <p>19 A It states on the first page that</p> <p>20 it's effective as of the 11th day of</p> <p>21 December 2006.</p> <p>22 Q Did you participate in the</p> <p>23 negotiation of this settlement agreement, either</p> <p>24 directly or indirectly?</p> <p>25 I'm just looking for a yes or no</p>

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<p>33</p> <p>1 answer.</p> <p>2 MR. NELSON: Okay.</p> <p>3 With that, you can answer the</p> <p>4 question.</p> <p>5 A No.</p> <p>6 Q By entering into this settlement</p> <p>7 agreement, did that give SAP the ability to keep</p> <p>8 selling those products listed in the agreement,</p> <p>9 namely, SRM, ERP, CRM and mySAP Business Suite?</p> <p>10 MR. NELSON: Objection.</p> <p>11 Scope.</p> <p>12 I'm getting a little thin on</p> <p>13 patience for questions that are</p> <p>14 obviously outside the scope and in</p> <p>15 plain disregard of the agreement we</p> <p>16 have regarding the scope of the</p> <p>17 deposition.</p> <p>18 MS. STOLL-DEBELL: And I'm</p> <p>19 getting a little thin on patience with</p> <p>20 the long objections.</p> <p>21 It's just making this</p> <p>22 deposition last longer.</p> <p>23 MR. NELSON: The deposition</p> <p>24 should be over in light of the</p> <p>25 agreement regarding scope.</p>	<p>35</p> <p>1 Q Has SAP continued to sell the SRM</p> <p>2 product since this agreement was entered?</p> <p>3 A I'm sorry, say that one more time.</p> <p>4 MR. WORCESTER: You broke up a</p> <p>5 little bit, Kirstin.</p> <p>6 Q I'm sorry.</p> <p>7 Has SAP continued to sell the SRM</p> <p>8 product since this agreement was entered in</p> <p>9 December of 2006?</p> <p>10 A SAP continues to sell its SRM</p> <p>11 product.</p> <p>12 Q Has SAP continued to sell its mySAP</p> <p>13 Business Suite product since the settlement</p> <p>14 agreement was entered in December of 2006?</p> <p>15 A SAP continues to sell its Business</p> <p>16 Suite product.</p> <p>17 Q Has SAP continued to sell its ERP</p> <p>18 product since the settlement agreement was entered</p> <p>19 in December of 2006?</p> <p>20 A SAP continues to sell its ERP</p> <p>21 product.</p> <p>22 Q And has SAP continued to sell its</p> <p>23 CRM product since the agreement was entered in</p> <p>24 December of 2006?</p> <p>25 A SAP continues to sell its CRM</p>
<p>34</p> <p>1 MS. STOLL-DEBELL: We can</p> <p>2 argue about whether there is an</p> <p>3 agreement and what it was.</p> <p>4 I think we should just proceed</p> <p>5 forward with the deposition.</p> <p>6 If you have got an objection,</p> <p>7 make it. And let's try and get this</p> <p>8 finished.</p> <p>9 MR. NELSON: The only thing I</p> <p>10 would say, Kirstin, is that you ought</p> <p>11 to ask the questions that you think</p> <p>12 are within the scope of the</p> <p>13 deposition, because we are going to</p> <p>14 end it if it keeps going outside.</p> <p>15 Go ahead, Mr. Wissing.</p> <p>16 THE WITNESS: I'm sorry.</p> <p>17 Repeat the question.</p> <p>18 BY MS. STOLL-DEBELL:</p> <p>19 Q Sure.</p> <p>20 Does this settlement agreement, did</p> <p>21 it give SAP the right to keep selling the products</p> <p>22 listed in the agreement, namely SRM, ERP, CRM and</p> <p>23 mySAP Business Suite?</p> <p>24 A I haven't reviewed the agreement, so</p> <p>25 I don't know.</p>	<p>36</p> <p>1 product.</p> <p>2 Q Let's look at -- actually, before we</p> <p>3 do that, does this settlement agreement also give</p> <p>4 a license for methods covered by ePlus' patent?</p> <p>5 MR. NELSON: I'll object</p> <p>6 regarding the scope.</p> <p>7 A I don't know.</p> <p>8 Q Does it list any SAP services that</p> <p>9 would be part of this license agreement?</p> <p>10 A I don't know.</p> <p>11 Q Let's look at Exhibit 46.</p> <p>12 There should be two pages in front</p> <p>13 of you, Mr. Wissing, one has a Bates No.</p> <p>14 L0378501.</p> <p>15 MR. WORCESTER: We only have</p> <p>16 one page and it's not Bates numbered.</p> <p>17 Q We did a Bates numbered copy and I</p> <p>18 found it difficult to read, so I sent out a</p> <p>19 clearer version of it, which is what you should</p> <p>20 have in front of you.</p> <p>21 MR. WORCESTER: We have a</p> <p>22 one-page version without Bates</p> <p>23 numbers.</p> <p>24 It's headed at the top "SAP</p> <p>25 Business Suite, Manage a Lean</p>

<p>37</p> <p>1 Enterprise, Leverage Customer</p> <p>2 Communities, and Optimized Business</p> <p>3 Model for Growth."</p> <p>4 MS. STOLL-DEBELL: For the</p> <p>5 record, we did produce this page with</p> <p>6 a Bates number, but, again, I think</p> <p>7 Mr. Wissing is looking at a much</p> <p>8 clearer copy of that.</p> <p>9 With that, if you can take a</p> <p>10 look at this, Mr. Wissing, and let me</p> <p>11 know when you are ready to answer</p> <p>12 questions about it.</p> <p>13 A (Perusing document.) Okay.</p> <p>14 Q Is that okay, you are ready, or,</p> <p>15 okay, you are looking at it?</p> <p>16 A Sorry. Okay, I'm ready.</p> <p>17 Q Very good.</p> <p>18 What is this document?</p> <p>19 A It's a screen shot from the SAP.com</p> <p>20 website.</p> <p>21 Q Is this currently a screen shot</p> <p>22 that's being offered on SAP's public website?</p> <p>23 A That is my understanding.</p> <p>24 Q Does it describe the SAP Business</p> <p>25 Suite application that we were talking about</p>	<p>39</p> <p>1 SAP supplier relationship management.</p> <p>2 Features and functions of SAP SRM.</p> <p>3 Features and functions of SAP SRM.</p> <p>4 Same again. A fourth page with that</p> <p>5 heading. A fifth page with that</p> <p>6 heading, and then a sixth page with</p> <p>7 that heading.</p> <p>8 Q What I think we will do, Mr.</p> <p>9 Wissing, let's just go page by page through this.</p> <p>10 My first question for the first page</p> <p>11 is what is this?</p> <p>12 A A screen shot from the SAP.com</p> <p>13 website.</p> <p>14 Q So this page is currently available</p> <p>15 on SAP's public website?</p> <p>16 A That is my understanding.</p> <p>17 Q Does this relate to the SRM</p> <p>18 application that is licensed by SAP?</p> <p>19 A It says at the top of the document</p> <p>20 SAP supplier relationship management.</p> <p>21 Q Is that SAP's SRM product?</p> <p>22 A Yes.</p> <p>23 Q Let's go to the next page.</p> <p>24 A Okay.</p> <p>25 Q What is this?</p>
<p>38</p> <p>1 earlier?</p> <p>2 MR. NELSON: Objection.</p> <p>3 Scope.</p> <p>4 A It says towards the top of the</p> <p>5 document SAP Business Suite.</p> <p>6 Q Does the SAP Business Suite include</p> <p>7 the SRM, ERP and CRM applications that we talked</p> <p>8 about earlier?</p> <p>9 MR. NELSON: If you know,</p> <p>10 Mr. Wissing.</p> <p>11 I'll object, it's outside the</p> <p>12 scope. If you know.</p> <p>13 A I think it can, yes.</p> <p>14 Q Let's look at Exhibit 48.</p> <p>15 MS. STOLL-DEBELL: For the</p> <p>16 record, this was produced with Bates</p> <p>17 Nos. L0378502, 8509. I believe what</p> <p>18 the witness has is a clearer copy of</p> <p>19 those pages.</p> <p>20 MR. WORCESTER: What we have</p> <p>21 here is eight pages, none of which are</p> <p>22 Bates stamped, and they all appear to</p> <p>23 be slightly different pages.</p> <p>24 The headings of each one is</p> <p>25 SAP supplier relationship management.</p>	<p>40</p> <p>1 A It's a screen shot from the SAP.com</p> <p>2 website.</p> <p>3 Q That's currently available on SAP's</p> <p>4 website?</p> <p>5 A That is my understanding.</p> <p>6 Q Does it describe the features and</p> <p>7 functions of SAP's SRM product?</p> <p>8 A It says SAP supplier relationship</p> <p>9 management features and functions.</p> <p>10 Q So let's go to the next page.</p> <p>11 A Okay.</p> <p>12 Q Is this a screen shot that is</p> <p>13 currently available on SAP's public website?</p> <p>14 A That is my understanding, yes.</p> <p>15 Q And it describes the features and</p> <p>16 functions of SAP's SRM product?</p> <p>17 A That's what it says.</p> <p>18 Q Specifically this one relates to the</p> <p>19 procure to pay feature?</p> <p>20 A That's what it says.</p> <p>21 Q Let's go to the next page.</p> <p>22 Is this a screen shot that is</p> <p>23 currently available on SAP's public website?</p> <p>24 A That is my understanding, yes.</p> <p>25 Q Does it describe the features and</p>

<p>41</p> <p>1 functions of SAP's SRM product and particularly</p> <p>2 the catalog management feature?</p> <p>3 A It says features and functions of</p> <p>4 SAP SRM catalog management.</p> <p>5 Q Let's go to the next page.</p> <p>6 Have you turned page?</p> <p>7 A Yes, I did.</p> <p>8 Q I heard the other pages turn.</p> <p>9 Is this a screen shot from, that is</p> <p>10 currently available on SAP's public website?</p> <p>11 A That is my understanding, yes.</p> <p>12 Q And it describes the centralized</p> <p>13 sourcing feature and function of SAP's SRM</p> <p>14 products?</p> <p>15 A It says features and functions of</p> <p>16 SAP SRM centralized sourcing.</p> <p>17 Q Let's go to the next page.</p> <p>18 Is this a screen shot that's</p> <p>19 currently available on SAP's public website?</p> <p>20 A That is my understanding, yes.</p> <p>21 Q Does this describe the features and</p> <p>22 functions of SAP's SRM centralized contract</p> <p>23 management feature?</p> <p>24 A It says features and functions of</p> <p>25 SAP's SRM centralized contract management.</p>	<p>43</p> <p>1 from SAP's public website is not accurate or are</p> <p>2 not accurate?</p> <p>3 A I have no reason.</p> <p>4 Q Okay. Let's look at Exhibit 49. It</p> <p>5 should be about six or seven pages here.</p> <p>6 MR. NELSON: Kirstin, he may</p> <p>7 be willing to blanket blast these ones</p> <p>8 if you --</p> <p>9 MS. STOLL-DEBELL: I was</p> <p>10 thinking that.</p> <p>11 MR. NELSON: If you have an</p> <p>12 interest in going one by one, I don't</p> <p>13 care, but I am guessing that Mr.</p> <p>14 Wissing will probably be willing to do</p> <p>15 it the other way, too.</p> <p>16 Q Why don't you speed things up, if</p> <p>17 you don't mind taking a look at all of those.</p> <p>18 And my question will be the same as</p> <p>19 what I asked before, are these screen shots that</p> <p>20 are currently available on SAP's public website?</p> <p>21 A That's my understanding, yes.</p> <p>22 Q Do they all relate to SAP's ERP</p> <p>23 product?</p> <p>24 A (Perusing document.) Yes.</p> <p>25 Q Have you seen any of these pages as</p>
<p>42</p> <p>1 Q Go to the next page.</p> <p>2 A Okay.</p> <p>3 Q Is this a screen shot that is</p> <p>4 currently available on SAP's public website?</p> <p>5 A That is my understanding, yes.</p> <p>6 Q It describes the supplier evaluation</p> <p>7 feature of SAP's SRM product?</p> <p>8 A It says features and functions of</p> <p>9 SAP SRM supplier evaluation.</p> <p>10 Q Go to the next page.</p> <p>11 A Okay.</p> <p>12 Q Same question. Is this a screen</p> <p>13 shot of a page that is currently available on</p> <p>14 SAP's public website?</p> <p>15 A That is my understanding, yes.</p> <p>16 Q And does it describe the supplier</p> <p>17 collaboration feature of SAP's SRM product?</p> <p>18 A It says features and functions of</p> <p>19 SAP SRM supplier collaboration.</p> <p>20 Q Have you seen these different screen</p> <p>21 shots other than in connection with preparing for</p> <p>22 your deposition?</p> <p>23 A I don't believe so, no.</p> <p>24 Q Do you have any reason to believe</p> <p>25 that any of the information in any of these pages</p>	<p>44</p> <p>1 part of Exhibit 49 other than in connection with</p> <p>2 preparing for your deposition?</p> <p>3 A I do not believe so.</p> <p>4 Q Do you have any reason to believe</p> <p>5 that any information in any of these pages is not</p> <p>6 accurate?</p> <p>7 A No.</p> <p>8 Q Let's look at Exhibit 50.</p> <p>9 MR. WORCESTER: Kirstin, the</p> <p>10 first page of Exhibit 50 says Page 1</p> <p>11 of 2, but there is no Page 2 of 2.</p> <p>12 MS. STOLL-DEBELL: I think</p> <p>13 there are 17 pages there though.</p> <p>14 Is it the same you all have?</p> <p>15 MR. WORCESTER: Yes. We have</p> <p>16 17 pages, which appear to be a variety</p> <p>17 of documents, the first one of which</p> <p>18 appears to be missing a page.</p> <p>19 MS. STOLL-DEBELL: So just for</p> <p>20 the record, these were all produced</p> <p>21 with Bates Nos. L0378510 to</p> <p>22 L0378526.</p> <p>23 Also, for the record, I think</p> <p>24 the second page of that first screen</p> <p>25 shot didn't have anything on it, just</p>

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<p>45</p> <p>1 for whatever reason printed as two</p> <p>2 pages.</p> <p>3 MR. WORCESTER: Okay. That</p> <p>4 may be, but we don't have it here.</p> <p>5 Q Mr. Wissing, I want to do the same</p> <p>6 thing that we did before.</p> <p>7 There are 17 pages here, so if you</p> <p>8 want me to break them up, we can do that, or if</p> <p>9 you want to look at them all, I will be asking the</p> <p>10 same basic questions I asked about the last</p> <p>11 exhibit.</p> <p>12 What is your preference?</p> <p>13 A If I can just look at them all, then</p> <p>14 we can do the same process as last go-around.</p> <p>15 Q Sure. Please take your time and let</p> <p>16 me know when you are ready.</p> <p>17 THE VIDEOGRAPHER: Counsel,</p> <p>18 this is the videographer speaking.</p> <p>19 While the witness is looking</p> <p>20 at the document, may I change</p> <p>21 videotapes?</p> <p>22 MS. STOLL-DEBELL:</p> <p>23 Absolutely.</p> <p>24 THE VIDEOGRAPHER: Thank you.</p> <p>25 This concludes videotape No. 1</p>	<p>47</p> <p>1 from the top.</p> <p>2 MS. STOLL-DEBELL: We are</p> <p>3 looking at Exhibit 50, right?</p> <p>4 MR. WORCESTER: Yes.</p> <p>5 A You said Exhibit 5.</p> <p>6 Q Oh, I did?</p> <p>7 A Yes.</p> <p>8 Q Okay. I'm sorry. Anyway, let's</p> <p>9 start over.</p> <p>10 Is Exhibit 50 a list of screen shots</p> <p>11 or series of screen shots that are currently</p> <p>12 available on SAP's public website?</p> <p>13 A That is my understanding, yes.</p> <p>14 Q Do they all relate to SAP's CRM</p> <p>15 software product?</p> <p>16 A A number of them do, and then there</p> <p>17 are others that reference SAP Business</p> <p>18 Communications Management and SAP IT Service</p> <p>19 Management.</p> <p>20 Q Are those different than SAP's CRM</p> <p>21 software?</p> <p>22 MR. NELSON: Objection.</p> <p>23 If you know, Mr. Wissing.</p> <p>24 A I don't know.</p> <p>25 Q Have you seen these screen shots,</p>
<p>46</p> <p>1 of the deposition of SAP, S.A. by</p> <p>2 Gerard Wissing.</p> <p>3 We are off the record at 12:57</p> <p>4 p.m., May 11, 2010.</p> <p>5 (Discussion off the record.)</p> <p>6 THE VIDEOGRAPHER: This is the</p> <p>7 beginning of videotape No. 2 of the</p> <p>8 deposition of SAP, S.A. by Gerard</p> <p>9 Wissing.</p> <p>10 We are on the record at</p> <p>11 12:58 p.m., May 11, 2010.</p> <p>12 BY MS. STOLL-DEBELL:</p> <p>13 Q Mr. Wissing, I am just assuming you</p> <p>14 are continuing to look at those pages. Let me</p> <p>15 know when you are ready.</p> <p>16 A I'm ready.</p> <p>17 Q Is Exhibit 5 a series of screen</p> <p>18 shots that you are currently --</p> <p>19 MR. WORCESTER: Exhibit 50,</p> <p>20 Kirstin?</p> <p>21 MS. STOLL-DEBELL: Pardon me?</p> <p>22 MR. WORCESTER: Exhibit 50?</p> <p>23 MS. STOLL-DEBELL: Yes. I'm</p> <p>24 sorry.</p> <p>25 MR. NELSON: Start that one</p>	<p>48</p> <p>1 any of them, other than in connection with</p> <p>2 preparing for your deposition?</p> <p>3 A I don't believe so, no.</p> <p>4 Q Do you have any reason to believe</p> <p>5 that there's any information in any of these</p> <p>6 screen shots that is not accurate?</p> <p>7 A I have no reason.</p> <p>8 Q Does SAP mark its Business Suite</p> <p>9 products with any patent numbers for patents owned</p> <p>10 by ePlus?</p> <p>11 A No.</p> <p>12 Q Does SAP mark its SRM products with</p> <p>13 any patent numbers for any patents owned by ePlus?</p> <p>14 A No.</p> <p>15 Q Does SAP mark its ERP products with</p> <p>16 any patent numbers for any patents owned by ePlus?</p> <p>17 A No.</p> <p>18 Q Does SAP market CRM products with</p> <p>19 any patent numbers for any patents owned by ePlus?</p> <p>20 A No.</p> <p>21 Q Has ePlus ever asked SAP to mark any</p> <p>22 products with any patent numbers for patents owned</p> <p>23 by ePlus?</p> <p>24 MR. NELSON: Objection.</p> <p>25 It's outside the scope.</p>

<p>49</p> <p>1 Mr. Wissing, if you know from</p> <p>2 your personal knowledge, you may</p> <p>3 answer.</p> <p>4 A I don't know.</p> <p>5 Q Since the settlement agreement, that</p> <p>6 is, I think, Exhibit 45 was entered in December</p> <p>7 2006, has SAP made any changes to its Business</p> <p>8 Suite because of any patents owned by ePlus?</p> <p>9 A I'm sorry, repeat the question one</p> <p>10 more time.</p> <p>11 Q Sure.</p> <p>12 Since the settlement agreement was</p> <p>13 entered with ePlus, that's Exhibit 45, has SAP</p> <p>14 made any changes to its business suite products</p> <p>15 because of any patents owned by ePlus?</p> <p>16 A No.</p> <p>17 Q Has SAP made any changes to the</p> <p>18 Business Suite products because of the lawsuit</p> <p>19 that was filed against SAP by ePlus?</p> <p>20 A No.</p> <p>21 Q Has SAP made any changes to the</p> <p>22 Business Suite because of the settlement agreement</p> <p>23 it entered into with ePlus?</p> <p>24 A No.</p> <p>25 Q I'm going to ask those same</p>	<p>51</p> <p>1 Q Has SAP made any change to the CRM</p> <p>2 products because of the lawsuit that was filed</p> <p>3 against it by ePlus?</p> <p>4 A No.</p> <p>5 Q Has SAP made any changes to the CRM</p> <p>6 product because of any patents owned by ePlus?</p> <p>7 A No.</p> <p>8 Q Has SAP made any changes to the CRM</p> <p>9 product because of the settlement agreement it</p> <p>10 entered into with ePlus?</p> <p>11 A No.</p> <p>12 Q Does SAP mark any of its products</p> <p>13 with any patent numbers?</p> <p>14 MR. NELSON: Just a second.</p> <p>15 I want to think about that</p> <p>16 one.</p> <p>17 Is your question does SAP mark</p> <p>18 any products with any patent numbers?</p> <p>19 MS. STOLL-DEBELL: Yes.</p> <p>20 MR. NELSON: It's outside the</p> <p>21 scope.</p> <p>22 If you know the answer, you</p> <p>23 may answer.</p> <p>24 A I don't know.</p> <p>25 MR. NELSON: Kirstin, you will</p>
<p>50</p> <p>1 questions for the other three products.</p> <p>2 Let's start with SRM.</p> <p>3 Has SAP made any changes to the SRM</p> <p>4 products because of any patents owned by ePlus?</p> <p>5 A No.</p> <p>6 Q Has SAP made any changes to the SRM</p> <p>7 product because of the lawsuit that ePlus filed</p> <p>8 against SAP?</p> <p>9 A No.</p> <p>10 Q Has SAP made any changes to the SRM</p> <p>11 products because of the settlement agreement it</p> <p>12 entered into with ePlus?</p> <p>13 A No.</p> <p>14 Q Let's go over ERP.</p> <p>15 Has SAP made any changes to the ERP</p> <p>16 product because of the lawsuit that was filed</p> <p>17 against it by ePlus?</p> <p>18 A No.</p> <p>19 Q Has SAP made any changes to the ERP</p> <p>20 product because of any patents owned by ePlus?</p> <p>21 A No.</p> <p>22 Q Has SAP made any changes to its ERP</p> <p>23 product because of the settlement agreement it</p> <p>24 entered into with ePlus?</p> <p>25 A No.</p>	<p>52</p> <p>1 probably get an answer you are looking</p> <p>2 for if you ask about specific</p> <p>3 products.</p> <p>4 MS. STOLL-DEBELL: Okay.</p> <p>5 Q Does SAP mark its Business Suite</p> <p>6 product with any patent numbers?</p> <p>7 A No.</p> <p>8 Q Does SAP mark its SRM product with</p> <p>9 any patent numbers?</p> <p>10 A No.</p> <p>11 Q Does SAP mark its ERP product with</p> <p>12 any patent numbers?</p> <p>13 A No.</p> <p>14 Q Does SAP mark CRM product with any</p> <p>15 patent numbers?</p> <p>16 A No.</p> <p>17 Q Has ePlus asked SAP to mark its</p> <p>18 Business Suite with any patent numbers?</p> <p>19 MR. NELSON: Objection.</p> <p>20 Scope. I think it's outside</p> <p>21 the scope.</p> <p>22 If you have an answer from</p> <p>23 your personal knowledge, Mr. Wissing,</p> <p>24 you may provide it.</p> <p>25 MS. STOLL-DEBELL: Mr. Nelson,</p>

<p>53</p> <p>1 I thought you were just going to say</p> <p>2 objection, scope.</p> <p>3 MR. NELSON: Sorry.</p> <p>4 A I don't know.</p> <p>5 Q Has ePlus asked SAP to mark the SRM</p> <p>6 product with any patent numbers?</p> <p>7 MR. NELSON: Objection.</p> <p>8 Scope.</p> <p>9 A I don't know.</p> <p>10 Q Has SAP -- excuse me.</p> <p>11 Has ePlus asked SAP to mark its ERP</p> <p>12 products with any patent numbers?</p> <p>13 MR. NELSON: Objection.</p> <p>14 Scope.</p> <p>15 A I don't know.</p> <p>16 Q Has ePlus asked SAP to mark its CRM</p> <p>17 products with any patent numbers?</p> <p>18 MR. NELSON: Same objection as</p> <p>19 to scope.</p> <p>20 A I don't know.</p> <p>21 Q Let's look at Exhibit 47. It should</p> <p>22 be one page. For the record, we produced it as</p> <p>23 L0378534.</p> <p>24 MR. WORCESTER: Like the other</p> <p>25 one, the one in front of us right now</p>	<p>55</p> <p>1 implementing its software applications?</p> <p>2 MR. NELSON: Objection as to</p> <p>3 scope.</p> <p>4 A I'm not certain what you mean by</p> <p>5 implementing, but I believe we offer support,</p> <p>6 maintenance.</p> <p>7 Q What is your understanding of the</p> <p>8 type of services that SAP offers in connection</p> <p>9 with its software applications?</p> <p>10 MR. NELSON: Same objection as</p> <p>11 to scope.</p> <p>12 A It's at a very high level.</p> <p>13 Q Sure.</p> <p>14 A We help customers get the product</p> <p>15 working and ship upgrades, service packs.</p> <p>16 Q Do you help customers upload data to</p> <p>17 your software applications?</p> <p>18 MR. NELSON: I'm going to</p> <p>19 object as to scope.</p> <p>20 I'm getting concerned that</p> <p>21 we're making a record here on</p> <p>22 something that Mr. Wissing has zero</p> <p>23 knowledge about.</p> <p>24 It calls for speculation. If</p> <p>25 you've got something inside the scope,</p>
<p>54</p> <p>1 doesn't have a Bates number on it.</p> <p>2 A Okay.</p> <p>3 Q Is this a screen shot that is</p> <p>4 currently available on SAP's public website?</p> <p>5 A That is my understanding, yes.</p> <p>6 Q Does it describe the software</p> <p>7 support services offered by SAP?</p> <p>8 MR. NELSON: Objection. Scope.</p> <p>9 A It says on the document software</p> <p>10 maintenance and support, SAP enterprise support.</p> <p>11 Q Have you seen this screen shot other</p> <p>12 than in connection with preparing for your</p> <p>13 deposition?</p> <p>14 A I do not believe so.</p> <p>15 Q Do you have any reason to believe</p> <p>16 that any of the information in the screen shot is</p> <p>17 not accurate?</p> <p>18 A No.</p> <p>19 Q Does SAP offer support services in</p> <p>20 connection with its ERP software applications?</p> <p>21 MR. NELSON: Objection.</p> <p>22 Scope.</p> <p>23 If you know, Mr. Wissing.</p> <p>24 A I believe it does, yes.</p> <p>25 Q Does it offer services for</p>	<p>56</p> <p>1 let's hear it, otherwise let's move</p> <p>2 on.</p> <p>3 MS. STOLL-DEBELL: Are you</p> <p>4 instructing him not to answer?</p> <p>5 MR. NELSON: I am not</p> <p>6 instructing him not to answer right</p> <p>7 now, but the next one I will.</p> <p>8 A Sorry. Repeat the question.</p> <p>9 MS. STOLL-DEBELL: Actually,</p> <p>10 can you read it back, please?</p> <p>11 (The record was read.)</p> <p>12 MR. NELSON: I will also</p> <p>13 object that it's vague.</p> <p>14 A I don't know.</p> <p>15 Q Let's look at Exhibit 51.</p> <p>16 A Is that one we went over?</p> <p>17 Q I don't believe we have looked at</p> <p>18 this one yet.</p> <p>19 MS. STOLL-DEBELL: For the</p> <p>20 record, this should have Bates Nos.</p> <p>21 L 378483 through L0378496.</p> <p>22 MR. WORCESTER: If you could</p> <p>23 just take a look at that, Mr. Wissing.</p> <p>24 When you are ready, let</p> <p>25 counsel know.</p>

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<p>57</p> <p>1 A (Perusing document.) Okay.</p> <p>2 Q Is this a SAP brochure that is</p> <p>3 currently available on SAP's public website?</p> <p>4 A That is my understanding, yes.</p> <p>5 Q Does it describe the features of</p> <p>6 SAP's catalog content management products?</p> <p>7 MR. NELSON: Objection.</p> <p>8 Sorry, Kirstin, please</p> <p>9 continue your question. I apologize.</p> <p>10 Q Does it describe the features of</p> <p>11 SAP's catalog content management product?</p> <p>12 MR. NELSON: Objection.</p> <p>13 Scope.</p> <p>14 A It says on the title page SAP</p> <p>15 catalog content management.</p> <p>16 Q Is this the catalog content</p> <p>17 management that is used in connection with SAP's</p> <p>18 SRM product?</p> <p>19 MR. NELSON: Objection.</p> <p>20 Outside the scope. Calls for</p> <p>21 speculation.</p> <p>22 A I don't know.</p> <p>23 Q Are you familiar with SAP's catalog</p> <p>24 content management product?</p> <p>25 A No.</p>	<p>59</p> <p>1 Royalty Rate (Full Term)."</p> <p>2 Then Exhibit 4B, Exhibit 4C</p> <p>3 and Exhibit 4D in succession.</p> <p>4 Q This is some exhibits from ePlus'</p> <p>5 damages expert report in connection with the</p> <p>6 lawsuit against Lawson?</p> <p>7 MR. WORCESTER: Before we ask</p> <p>8 any questions, Mr. Wissing hasn't</p> <p>9 looked at the document yet.</p> <p>10 MS. STOLL-DEBELL: You might</p> <p>11 look at the second page, which I think</p> <p>12 is bigger print.</p> <p>13 A Okay.</p> <p>14 Q You will see this is a table which</p> <p>15 are accused revenue of SAP for the lawsuit ePlus</p> <p>16 filed against SAP. It says from November 1, 2003</p> <p>17 through December 31, 2003, 26 million.</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q And then it says in 2004 the accused</p> <p>21 revenue was about 150 million.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q And then in 2005 it says the accused</p> <p>25 revenue was around 105 million?</p>
<p>58</p> <p>1 Q Do you have any reason to believe</p> <p>2 that any of the information in Exhibit 51 is not</p> <p>3 accurate?</p> <p>4 A No.</p> <p>5 Q At a very high level or very</p> <p>6 generally, about how much revenue does SAP make</p> <p>7 annually for licensing its SRM application?</p> <p>8 MR. NELSON: Objection.</p> <p>9 Scope.</p> <p>10 If you have personal</p> <p>11 knowledge, Mr. Wissing, go ahead.</p> <p>12 A I don't know.</p> <p>13 Q Could you say, is it more than</p> <p>14 \$10 million a year?</p> <p>15 MR. NELSON: Objection.</p> <p>16 Scope.</p> <p>17 Calls for speculation.</p> <p>18 A I don't know.</p> <p>19 Q Let's look at Exhibit 54.</p> <p>20 MS. STOLL-DEBELL: It should</p> <p>21 be four pages.</p> <p>22 MR. WORCESTER: Kirstin, what</p> <p>23 I have is a four-page document, the</p> <p>24 first page of which is Exhibit 4A,</p> <p>25 Calculation of SAP's Effective Running</p>	<p>60</p> <p>1 A Yes.</p> <p>2 Q Does that look like it's an accurate</p> <p>3 statement of what SAP's revenues were for the SRM</p> <p>4 product?</p> <p>5 MR. NELSON: Sorry, Kirstin, I</p> <p>6 didn't mean to speak over you.</p> <p>7 If you will repeat your</p> <p>8 question, I will then offer my</p> <p>9 objection. I apologize.</p> <p>10 MS. STOLL-DEBELL: What I am</p> <p>11 wanted to know is whether Mr. Wissing</p> <p>12 thinks this is generally an accurate</p> <p>13 statement of SAP's revenues for those</p> <p>14 years for its SRM product?</p> <p>15 MR. NELSON: Thank you. I</p> <p>16 apologize again for speaking over you.</p> <p>17 This is one where I'm going to</p> <p>18 offer the complete version of my scope</p> <p>19 objection because this is not sort of</p> <p>20 generally outside the scope, it is</p> <p>21 explicitly outside the scope for which</p> <p>22 SAP agreed to prepare or present a</p> <p>23 witness.</p> <p>24 I'm going to allow Mr. Wissing</p> <p>25 to answer this one question if he has</p>

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<p>61</p> <p>1 personal knowledge.</p> <p>2 But if we continue down this</p> <p>3 road, given that it explicitly puts</p> <p>4 this outside the scope of testimony we</p> <p>5 originally agreed to provide a witness</p> <p>6 for, we will stop.</p> <p>7 Go ahead, Mr. Wissing.</p> <p>8 A I don't know.</p> <p>9 MS. STOLL-DEBELL: If we can</p> <p>10 take a quick break, I want to go over</p> <p>11 my notes, make sure that there is</p> <p>12 nothing else I want to ask.</p> <p>13 I think I am getting close to</p> <p>14 being done.</p> <p>15 MR. NELSON: Okay. We can</p> <p>16 take a break.</p> <p>17 MS. STOLL-DEBELL: Why don't</p> <p>18 we take ten minutes.</p> <p>19 MR. ROBERTSON: I just wanted</p> <p>20 to bracket it and find out how long a</p> <p>21 break we are going to take?</p> <p>22 What time do you have? I have</p> <p>23 got 1:19.</p> <p>24 Why don't we just say 1:30 we</p> <p>25 will come back.</p>	<p>63</p> <p>1 on the record. The time is 1:38 p.m.</p> <p>2 MS. STOLL-DEBELL: For the</p> <p>3 record, I asked Mr. Nelson to confer</p> <p>4 with his client, Mr. Wissing, to</p> <p>5 discuss a question that I asked</p> <p>6 earlier about what aspects of the</p> <p>7 ePlus versus SAP lawsuit he was</p> <p>8 involved with without divulging any</p> <p>9 privileged information.</p> <p>10 MR. NELSON: And Mr. Wissing</p> <p>11 is prepared to answer with the</p> <p>12 instruction, to follow up, that he is</p> <p>13 not to divulge any privileged</p> <p>14 information.</p> <p>15 MS. STOLL-DEBELL: Okay.</p> <p>16 BY MS. STOLL-DEBELL:</p> <p>17 Q So, Mr. Wissing, if you can go ahead</p> <p>18 and answer that question for me without divulging</p> <p>19 privileged information.</p> <p>20 A Okay. I was involved in</p> <p>21 evidence-gathering activities.</p> <p>22 Q Anything else?</p> <p>23 A I was involved in customer subpoena</p> <p>24 activities.</p> <p>25 I was involved in the</p>
<p>62</p> <p>1 MS. STOLL-DEBELL: That sounds</p> <p>2 good.</p> <p>3 My computer says 11:18</p> <p>4 Mountain Time. So we will say 1:30</p> <p>5 Eastern Time.</p> <p>6 MR. ROBERTSON: That's great.</p> <p>7 MS. STOLL-DEBELL: I'm</p> <p>8 actually just going to I think stay on</p> <p>9 the phone.</p> <p>10 Everybody else can do whatever</p> <p>11 they want. I think the conference</p> <p>12 room, it would probably make sense to</p> <p>13 just keep it all connected, right?</p> <p>14 MR. NELSON: That's fine. We</p> <p>15 will keep this line running.</p> <p>16 THE VIDEOGRAPHER: We are off</p> <p>17 the record. The time is 1:18 p.m.</p> <p>18 (Whereupon, at 1:18 o'clock</p> <p>19 p.m., a recess was taken to 1:38</p> <p>20 o'clock p.m.)</p> <p>21 (The deposition resumed with</p> <p>22 all parties present.)</p> <p>23 G E R A R D W I S S I N G, resumed and</p> <p>24 testified further as follows:</p> <p>25 THE VIDEOGRAPHER: We are back</p>	<p>64</p> <p>1 reexamination-related activities.</p> <p>2 I was involved in our company demo</p> <p>3 system activities.</p> <p>4 Offhand, that's what I recall.</p> <p>5 Q And for the company demo, for what</p> <p>6 products, what products were demoed?</p> <p>7 MR. NELSON: Mr. Wissing, if</p> <p>8 you remember the product names, you</p> <p>9 can give that answer, but beyond that,</p> <p>10 I instruct you not to answer.</p> <p>11 A I do not recall.</p> <p>12 Q Did it include the SRM product?</p> <p>13 MR. NELSON: Asked and</p> <p>14 answered.</p> <p>15 A I do not recall.</p> <p>16 Q Did it include the Business Suite</p> <p>17 products?</p> <p>18 A I do not recall.</p> <p>19 Q Did it involve the CRM products?</p> <p>20 A I do not recall.</p> <p>21 Q And did it involve the ERP products?</p> <p>22 A I do not recall.</p> <p>23 Q Other than evidence gathering,</p> <p>24 customer subpoena activity, the reexam and the</p> <p>25 company demo, were there any other aspects of the</p>

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<p>65</p> <p>1 litigation that you were involved in that you</p> <p>2 haven't already told me about?</p> <p>3 MR. NELSON: Same</p> <p>4 instructions. Do not reveal any</p> <p>5 privileged information.</p> <p>6 With that, you can answer.</p> <p>7 A With that instruction, I don't think</p> <p>8 there is anything else that I recall that I can</p> <p>9 share.</p> <p>10 Q Thank you.</p> <p>11 I wanted to get more details about</p> <p>12 what your current roles and responsibilities are</p> <p>13 in connection with your current job.</p> <p>14 But, again, I don't want you to</p> <p>15 divulge privileged information.</p> <p>16 A Okay.</p> <p>17 Q With that limitation, can you</p> <p>18 describe for me what your roles and</p> <p>19 responsibilities are?</p> <p>20 MR. NELSON: Mr. Wissing, just</p> <p>21 like before, and based on our</p> <p>22 discussion, don't divulge any</p> <p>23 privileged information, but you can</p> <p>24 answer the question.</p> <p>25 A At a high level, I work on our</p>	<p>67</p> <p>1 didn't have your current title during the time</p> <p>2 that the ePlus/SAP lawsuit was happening?</p> <p>3 A Correct.</p> <p>4 Q And your title then was senior</p> <p>5 counsel during that time?</p> <p>6 A That's my recollection, yes.</p> <p>7 Q Can you tell me, again, without</p> <p>8 divulging privileged information, what your roles</p> <p>9 and responsibilities were in that position?</p> <p>10 MR. NELSON: Mr. Wissing, the</p> <p>11 same instruction, keep your answers at</p> <p>12 kind of the same level you have been</p> <p>13 giving.</p> <p>14 A At the time of the ePlus case, I</p> <p>15 worked on the ePlus case alone.</p> <p>16 Q You spent all of your time doing the</p> <p>17 things that you already described at a high level</p> <p>18 for me?</p> <p>19 A Correct.</p> <p>20 Q I don't know if I asked you this.</p> <p>21 I'm going to ask it again.</p> <p>22 Were you involved in the settlement</p> <p>23 negotiations for the ePlus lawsuit?</p> <p>24 I'm looking for yes or no.</p> <p>25 MR. NELSON: Okay. Scope</p>
<p>66</p> <p>1 budget process.</p> <p>2 I work on counseling and advising</p> <p>3 the chief IP officer on different intellectual</p> <p>4 property matters, as well as assisting him with</p> <p>5 updates to the executive board.</p> <p>6 I am involved in our risk management</p> <p>7 activities.</p> <p>8 I'm involved in various HR-related</p> <p>9 activities.</p> <p>10 I'm involved in our portfolio</p> <p>11 development strategy activities.</p> <p>12 I'm involved in our legislative</p> <p>13 reform and amicus activities.</p> <p>14 Offhand, that's the general high</p> <p>15 level list.</p> <p>16 Q Do you have any people that directly</p> <p>17 report to you?</p> <p>18 A No.</p> <p>19 MR. NELSON: Objection.</p> <p>20 Scope.</p> <p>21 A Sorry. No.</p> <p>22 Q Who do you directly report to?</p> <p>23 A I directly report to the chief IP</p> <p>24 officer.</p> <p>25 Q Is my understanding correct that you</p>	<p>68</p> <p>1 objection.</p> <p>2 Go ahead, Mr. Wissing.</p> <p>3 A No.</p> <p>4 Q Do you have a general understanding</p> <p>5 about the features of SAP's Business Suite</p> <p>6 product?</p> <p>7 MR. NELSON: Objection.</p> <p>8 I will object. It's outside</p> <p>9 the scope. I think we must be done.</p> <p>10 MS. STOLL-DEBELL: Not quite.</p> <p>11 Are you instructing him not to</p> <p>12 answer?</p> <p>13 MR. NELSON: I think the</p> <p>14 question is vague.</p> <p>15 If he can answer it, he can,</p> <p>16 but I'm going to shut down the</p> <p>17 deposition if it goes on much further.</p> <p>18 A I'm sorry. Can you repeat the</p> <p>19 question?</p> <p>20 Q Sure.</p> <p>21 My question is do you have a general</p> <p>22 understanding about the features of SAP's Business</p> <p>23 Suite product?</p> <p>24 MR. NELSON: Same objection.</p> <p>25 A I don't know.</p>

<p>69</p> <p>1 Q If I asked that same question for</p> <p>2 the other three, SRM, CRM and ERP, would your</p> <p>3 answer be the same?</p> <p>4 A Yes.</p> <p>5 Q Did ePlus accuse SAP's Business</p> <p>6 Suite product of infringing the three patents that</p> <p>7 are listed on that first page of Exhibit 45, the</p> <p>8 U.S. patent Nos. 6,023,683, 6,055,516, 6,505,172?</p> <p>9 MR. NELSON: Objection to</p> <p>10 scope.</p> <p>11 If you know, Mr. Wissing.</p> <p>12 A I do not recall.</p> <p>13 Q I will just call those three the</p> <p>14 ePlus patents so I don't have to read all the</p> <p>15 numbers for next two questions.</p> <p>16 Will that make sense to you?</p> <p>17 A Okay.</p> <p>18 Q So did SAP accuse the SRM products</p> <p>19 of infringing ePlus' patents?</p> <p>20 MR. NELSON: Objection.</p> <p>21 You may want to look at that</p> <p>22 one again.</p> <p>23 You said SAP.</p> <p>24 MS. STOLL-DEBELL: I did?</p> <p>25 MR. NELSON: Yes.</p>	<p>71</p> <p>1 ePlus patents; is that correct?</p> <p>2 A Correct.</p> <p>3 Q And SAP has not marked its SRM</p> <p>4 product with any of those three ePlus patents?</p> <p>5 A Correct.</p> <p>6 Q And SAP has not marked its CRM</p> <p>7 product with any of those three ePlus patents?</p> <p>8 A Correct.</p> <p>9 Q And SAP has not marked its ERP</p> <p>10 product with any of those three ePlus patents?</p> <p>11 A Correct.</p> <p>12 MS. STOLL-DEBELL: I think</p> <p>13 that's all the questions that I have</p> <p>14 for now.</p> <p>15 I do want to state for the</p> <p>16 record that we do not agree with</p> <p>17 Mr. Nelson as to his position relating</p> <p>18 to an agreement as to the scope of</p> <p>19 this deposition.</p> <p>20 And we reserve the right to</p> <p>21 continue it to answers to questions</p> <p>22 within the topics listed in the</p> <p>23 subpoena.</p> <p>24 MR. NELSON: SAP would respond</p> <p>25 at the appropriate time.</p>
<p>70</p> <p>1 MS. STOLL-DEBELL: I'm sorry.</p> <p>2 Q Did ePlus accuse SAP of infringing</p> <p>3 ePlus' -- let me start over.</p> <p>4 Did ePlus accuse SAP's SRM products</p> <p>5 of infringing those three ePlus patents?</p> <p>6 MR. NELSON: Objection to</p> <p>7 scope.</p> <p>8 If you know, Mr. Wissing, go</p> <p>9 ahead.</p> <p>10 A I do not recall.</p> <p>11 Q Did ePlus accuse SAP's ERP product</p> <p>12 of infringing those three patents?</p> <p>13 MR. NELSON: Same scope</p> <p>14 objection.</p> <p>15 If you know, go ahead and</p> <p>16 answer.</p> <p>17 A I do not recall.</p> <p>18 Q And same question, did ePlus accuse</p> <p>19 SAP's CRM product of infringing those three ePlus</p> <p>20 patents?</p> <p>21 MR. NELSON: Same objection.</p> <p>22 A I do not recall.</p> <p>23 Q Just to make sure that I have got</p> <p>24 this on the record, SAP has not marked its</p> <p>25 Business Suite product with any of those three</p>	<p>72</p> <p>1 MS. STOLL-DEBELL: Mr.</p> <p>2 Robertson, do you have any questions?</p> <p>3 MR. ROBERTSON: I do. Thank</p> <p>4 you.</p> <p>5 CROSS-EXAMINATION</p> <p>6 BY MR. ROBERTSON:</p> <p>7 Q Mr. Wissing, can you hear me?</p> <p>8 A Yes.</p> <p>9 Q My name is Scott Robertson and I am</p> <p>10 counsel for the plaintiff, ePlus, Inc.</p> <p>11 Good afternoon, sir.</p> <p>12 I don't have a lot of questions</p> <p>13 here, but I would like to go over just a few</p> <p>14 things, if we could.</p> <p>15 If at any time you don't understand</p> <p>16 me or you want me to restate the question, just</p> <p>17 let me know, I will attempt to do that.</p> <p>18 In response to Ms. Stoll-Debell's</p> <p>19 questions --</p> <p>20 MR. ROBERTSON: And if I</p> <p>21 could, is it all right if I call you</p> <p>22 Kirstin?</p> <p>23 MS. STOLL-DEBELL: Yes.</p> <p>24 MR. ROBERTSON: That would be</p> <p>25 easier.</p>

<p>73</p> <p>1 Q You were asked questions about the</p> <p>2 ePlus patents, which I will refer to as the '683,</p> <p>3 the '516 and the '172 patents.</p> <p>4 Do you recall some questions about</p> <p>5 those?</p> <p>6 A I recall questions.</p> <p>7 Q You don't have any familiarity with</p> <p>8 those patents in the sense that you reviewed them</p> <p>9 in preparation for your testimony here today; is</p> <p>10 that right?</p> <p>11 A Correct.</p> <p>12 Q Let me rephrase it.</p> <p>13 Did you review those patents in</p> <p>14 preparation for your testimony today?</p> <p>15 MR. WORCESTER: In keeping</p> <p>16 with the prior objections that</p> <p>17 Mr. Nelson made, you can answer yes or</p> <p>18 no.</p> <p>19 A I have not.</p> <p>20 Q So it follows from that then you did</p> <p>21 no analysis, sir, in preparation for your</p> <p>22 testimony today to determine whether or not any</p> <p>23 SAP software products, services or systems were</p> <p>24 covered by one or more claims of those ePlus</p> <p>25 patents, correct?</p>	<p>75</p> <p>1 Q Or the mySAP Business Suite</p> <p>2 products, correct?</p> <p>3 A Correct.</p> <p>4 Q If you could put in front of you,</p> <p>5 sir, I'm probably going to have kind of a global</p> <p>6 question, Exhibits 46, 47, 48, 49, 50, 51 and 55,</p> <p>7 which I believe were mostly screen shots, you</p> <p>8 testified to, about certain product offerings of</p> <p>9 SAP. It looks like some sort of brochure or two</p> <p>10 brochures.</p> <p>11 When you have those in front of you,</p> <p>12 will you just let me know, sir?</p> <p>13 A I have them in front of me.</p> <p>14 MR. WORCESTER: Just to</p> <p>15 clarify the record, I don't think that</p> <p>16 the witness testified that 54 or 55</p> <p>17 were screen shots -- 51 or 55, I'm</p> <p>18 sorry.</p> <p>19 MR. ROBERTSON: I'm sorry. If</p> <p>20 I suggested that, I meant otherwise.</p> <p>21 I think those are brochures.</p> <p>22 Maybe the witness can clarify</p> <p>23 if he knows.</p> <p>24 Q Those aren't screen shots, are they,</p> <p>25 Mr. Wissing?</p>
<p>74</p> <p>1 MR. NELSON: Mr. Wissing, you</p> <p>2 can answer yes or no.</p> <p>3 A I'm sorry, repeat the question.</p> <p>4 MR. NELSON: I apologize. I</p> <p>5 won't interpose the instruction.</p> <p>6 He can ask you a yes or no</p> <p>7 question. You should give him a yes</p> <p>8 or no answer.</p> <p>9 Q That's all I'm asking for, just yes</p> <p>10 or no.</p> <p>11 You did no analysis in preparation</p> <p>12 for your testimony today to determine whether or</p> <p>13 not any SAP software products, services or systems</p> <p>14 were covered by one or more claims of those ePlus</p> <p>15 patents we have been discussing, correct?</p> <p>16 A Correct.</p> <p>17 Q Just so we are clear on the record,</p> <p>18 that would be consistent with the SRM product that</p> <p>19 we have been talking about, correct?</p> <p>20 Just yes or no.</p> <p>21 A Correct.</p> <p>22 Q The ERP product, correct?</p> <p>23 A Correct.</p> <p>24 Q The CRM?</p> <p>25 A Correct.</p>	<p>76</p> <p>1 A No.</p> <p>2 Q From the web site?</p> <p>3 A No. They don't appear to be.</p> <p>4 Q Now, here is my question with</p> <p>5 respect to each of these. Why don't you take your</p> <p>6 time, go through them.</p> <p>7 Could you tell me if anywhere on any</p> <p>8 of these documents, Exhibits 46, 47, 48, 49, 50,</p> <p>9 51 and 55, SAP has marked them with any patents of</p> <p>10 any party, including SAP or a third party?</p> <p>11 A I'm sorry, can you clarify the</p> <p>12 question?</p> <p>13 Q Sure. I want to know if there are</p> <p>14 any patents that are marked on any of these</p> <p>15 exhibits that I have identified, whether they be</p> <p>16 from SAP or from any third party.</p> <p>17 A Okay. That's going to take a little</p> <p>18 time.</p> <p>19 Q I understand. Take your time.</p> <p>20 A Should I respond for each example I</p> <p>21 have completed looking at and just say for this</p> <p>22 example?</p> <p>23 Q Yes. Why don't you just say for</p> <p>24 Exhibit 46, yes or no, serialim.</p> <p>25 A Forty-six, no.</p>

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<p>77</p> <p>1 [Forty-seven, no.]</p> <p>2 [Forty-eight, no.]</p> <p>3 [Forty-nine, no.]</p> <p>4 [Fifty, no.]</p> <p>5 [Fifty-one, no.]</p> <p>6 [Fifty-five, no.]</p> <p>7 Q I understand you indicated to</p> <p>8 Kirstin that you are a patent attorney; is that</p> <p>9 right?</p> <p>10 A I'm a registered patent attorney,</p> <p>11 correct.</p> <p>12 Q And you are aware that SAP owns</p> <p>13 certain patents, correct? Yes or no.</p> <p>14 A Yes.</p> <p>15 Q [And these exhibits we were looking</p> <p>16 at, 46, 47, 48, 49, 50, 51, and 55, were relating</p> <p>17 to certain product offerings by SAP that Kirstin</p> <p>18 has been referring to as the Business Suite</p> <p>19 products, the SRM products, the ERP products and</p> <p>20 the CRM products, correct?</p> <p>21 A I believe that there was one</p> <p>22 document where I referenced two other products, as</p> <p>23 well.</p> <p>24 Q SAP hasn't marked any of these red</p> <p>25 pages or brochures with its patents, right?</p>	<p>79</p> <p>1 If you want to ask him about</p> <p>2 the practices, past and present, you</p> <p>3 can do so.</p> <p>4 BY MR. ROBERTSON:</p> <p>5 Q What is the present practice,</p> <p>6 Mr. Wissing?</p> <p>7 A I believe that's based upon a legal</p> <p>8 analysis, I actually believe it's privileged. I</p> <p>9 would like to talk to my counsel about that.</p> <p>10 MR. WORCESTER: We are going</p> <p>11 to go off the record.</p> <p>12 Q Right now though you don't feel you</p> <p>13 can divulge to me what the policy is; is that</p> <p>14 right?</p> <p>15 A That's correct.</p> <p>16 Q I will accept that.</p> <p>17 In the SAP/ePlus litigation,</p> <p>18 SAP...liability; isn't that right?</p> <p>19 MR. NELSON: We had a couple</p> <p>20 of dropouts, Scott.</p> <p>21 I don't think anyone heard the</p> <p>22 question.</p> <p>23 Q Let me Rephrase.</p> <p>24 [In the SAP/ePlus litigation, SAP</p> <p>25 denied any liability; isn't that right?</p>
<p>78</p> <p>1 A There's no patents listed on these</p> <p>2 pages that I reviewed.</p> <p>3 Q Let me ask you a question. I just</p> <p>4 want to know yes or no.</p> <p>5 Do you know whether SAP has a policy</p> <p>6 with regard to marking?</p> <p>7 MR. NELSON: The instruction I</p> <p>8 will give you is that you may answer</p> <p>9 the question yes or no.</p> <p>10 MR. ROBERTSON: That's all I</p> <p>11 want.</p> <p>12 A I'm sorry, repeat the question.</p> <p>13 Q Sure. Do you know whether or not,</p> <p>14 yes or no, SAP has a policy with respect to</p> <p>15 marking?</p> <p>16 A Yes.</p> <p>17 Q Patents on products?</p> <p>18 A Yes.</p> <p>19 Q Does it have one?</p> <p>20 A Yes.</p> <p>21 Q Could you tell me what that is?</p> <p>22 MR. NELSON: Scott, I'm going</p> <p>23 to give an instruction.</p> <p>24 I think that information about</p> <p>25 this policy is privileged.</p>	<p>80</p> <p>1 A That's my understanding, correct.</p> <p>2 Q And it's also your understanding,</p> <p>3 Mr. Wissing, isn't it, that to this day SAP has</p> <p>4 never admitted liability; isn't that right?</p> <p>5 MR. NELSON: I will object to</p> <p>6 the -- sorry, Scott, continue.</p> <p>7 Are you done?</p> <p>8 MR. ROBERTSON: Let me</p> <p>9 rephrase the question.</p> <p>10 BY MR. ROBERTSON:</p> <p>11 Q [Is it your understanding,</p> <p>12 Mr. Wissing, that to this present day SAP has</p> <p>13 never admitted liability with respect to the ePlus</p> <p>14 patents we are discussing here today?</p> <p>15 MR. NELSON: I think it's</p> <p>16 outside the scope, but if you know the</p> <p>17 answer personally, Mr. Wissing, you</p> <p>18 may answer yes or no.</p> <p>19 A [My understanding is we have not.</p> <p>20 Q You have not admitted liability,</p> <p>21 correct?</p> <p>22 A Correct.</p> <p>23 Q Now, I just want to refer to Exhibit</p> <p>24 No. 45, which was the patent license agreement.</p> <p>25 Do you have that?</p>

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<p>81</p> <p>1 A Yes.</p> <p>2 Q Specifically, if you could go to</p> <p>3 Page 8, Mr. Wissing, under the heading of No. 4,</p> <p>4 fees.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Just confirm for me that</p> <p>8 notwithstanding the fact that SAP to this day has</p> <p>9 never admitted liability with respect to the ePlus</p> <p>10 patent, this agreement reflects that it paid ePlus</p> <p>11 \$17.5 million, correct?</p> <p>12 MR. NELSON: The document</p> <p>13 speaks for itself.</p> <p>14 If you have an answer,</p> <p>15 Mr. Wissing, go ahead.</p> <p>16 A The document says "Paid to ePlus the</p> <p>17 amount of 17,500,000 United States dollars."</p> <p>18 Q Do you have any reason to believe</p> <p>19 that that money was never paid to ePlus?</p> <p>20 A No, I have no reason.</p> <p>21 Q You were also asked about Exhibits</p> <p>22 52 and 53.</p> <p>23 Do you want to put those in front of</p> <p>24 you for a minute?</p> <p>25 MR. NELSON: Give me second,</p>	<p>83</p> <p>1 MR. ROBERTSON: That's all the</p> <p>2 questions I have.</p> <p>3 Thank you, Mr. Wissing.</p> <p>4 REDIRECT EXAMINATION</p> <p>5 BY MS. STOLL-DEBELL:</p> <p>6 Q I just have two follow-up questions,</p> <p>7 Mr. Wissing, and they relate to Exhibits 51 and</p> <p>8 55.</p> <p>9 So let's look at Exhibit 51 first.</p> <p>10 A Okay.</p> <p>11 Q I think you just testified that</p> <p>12 these were not screen shots from the website, is</p> <p>13 that right, 51?</p> <p>14 A Correct.</p> <p>15 Q It is a brochure that is currently</p> <p>16 available on SAP's public website; isn't that</p> <p>17 correct?</p> <p>18 A That is my understanding, correct.</p> <p>19 Q Look at Exhibit 55, as well.</p> <p>20 A One second.</p> <p>21 Q Sure.</p> <p>22 A Okay.</p> <p>23 Q I think you testified this is not a</p> <p>24 screen shot from SAP's website, right?</p> <p>25 A Correct.</p>
<p>82</p> <p>1 Scott.</p> <p>2 MR. ROBERTSON: Sure.</p> <p>3 MR. NELSON: Okay.</p> <p>4 Q Do you have them, Mr. Wissing?</p> <p>5 A Yes.</p> <p>6 Q Do I understand you to indicate that</p> <p>7 other than your preparation for this deposition</p> <p>8 today, you had never seen these two documents</p> <p>9 before; is that right?</p> <p>10 A Correct.</p> <p>11 Q You did no independent analysis to</p> <p>12 determine whether any of the information that's</p> <p>13 contained in either Exhibit 52 or 53 is accurate,</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q These are not SAP documents, isn't</p> <p>17 that right, they are generated by third parties?</p> <p>18 A That's my understanding, yes.</p> <p>19 Q And so as you sit here today, you</p> <p>20 can't say one way or another whether or not any of</p> <p>21 the information that's contained in these</p> <p>22 documents that were created and generated by third</p> <p>23 parties are accurate in any respect; isn't that</p> <p>24 right?</p> <p>25 A Correct.</p>	<p>84</p> <p>1 Q But it is a brochure that is</p> <p>2 currently available on SAP's public website; is</p> <p>3 that correct?</p> <p>4 A That's my understanding, correct.</p> <p>5 MS. STOLL-DEBELL: That's all</p> <p>6 the questions I have.</p> <p>7 MR. NELSON: I don't have any</p> <p>8 questions.</p> <p>9 MR. ROBERTSON: All right.</p> <p>10 Thank you.</p> <p>11 MR. WORCESTER: Thank you,</p> <p>12 everyone.</p> <p>13 THE VIDEOGRAPHER: Can I</p> <p>14 conclude the video?</p> <p>15 This ends videotape No. 2 and</p> <p>16 concludes the videotaped deposition of</p> <p>17 SAP, S.A. by Gerard Wissing.</p> <p>18 We off the record at</p> <p>19 2:06 p.m., May 11, 2010.</p> <p>20 (Continued on next page.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 (Whereupon, at 2:06 o'clock
2 p.m., the deposition was concluded.)
3
4
5 _____
6 GERARD WISSING
7
8
9 SUBSCRIBED and SWORN to before me this _____
10 day of _____, 2010, in the
11 jurisdiction aforesaid.
12 _____
13 My Commission Expires Notary Public
14
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87

1 C E R T I F I C A T E
2 STATE OF NEW YORK)
3) ss.
4 COUNTY OF NEW YORK)
5 I, ANNETTE FORBES, a Certified
6 Shorthand (Stenotype) Reporter and
7 Notary Public of the State of New
8 York, do hereby certify that the
9 foregoing Deposition, of the witness,
10 GERARD WISSING, taken at the time and
11 place aforesaid, is a true and correct
12 transcription of my shorthand notes.
13 I further certify that I am
14 neither counsel for nor related to any
15 party to said action, nor in any wise
16 interested in the result or outcome
17 thereof.
18 IN WITNESS WHEREOF, I have
19 hereunto set my hand this 14th day of
20 May, 2010.
21
22 _____
23 ANNETTE FORBES, CSR, RPR
24
25

86

1 I N D E X P A G E
2 Witness Direct Cross Redirect
3 Gerard Wissing 6 72 83
4
5
6 E X H I B I T S (Premarked)
7 Exhibits Description
8 45 Patent License and Settlement Agreement
9 46 A document
10 47 Software Maintenance and Support document
11 48 7 page document
12 49 ERP Software document
13 50 Customer Relationship document
14 51 Catalog Content document
15 52 Market analysis
16 53 ERP Market Sizing Report
17 54 Calculation of SAP's Effective Running
18 Royalty Rate
19 55 Business All-In-One
20
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2010, I will electronically file the foregoing

**PLAINTIFF ePLUS INC'S OBJECTIONS TO DEFENDANT'S DEPOSITION
DESIGNATIONS AND SUMMARY OF THE DEPOSITION OF GERARD WISSING
AND COUNTER-DESIGNATIONS**

with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

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William D. Schultz, *pro hac vice*
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